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ABSTRACT

This document outlines all areas of the Family Support Act of 1988 that States should consider when implementing the mandated Jobs Opportunities and Basic Skills (JOBS) Program to provide a work/education/training program for recipients of Aid to Families with Dependent Children (AFDC). The following areas are addressed: (1) time frames and planning; (2) participation; (3) range of services; (4) service provision; (5) selection of activities and services; (6) dispute resolution and sanctions; (7) general provisions for all components; (8) educational activities and requirements; (9) work supplementation; (10) the Community Work Experience Program (CWEP); (11) job search; (12) child care; (13) supportive services other than child care; (14) supplementing lost income for former recipients; (15) extended eligibility for child care; (16) extended eligibility for medical assistance; (17) Federal and State financial participation; (18) Indians; (19) performance standards, reporting requirements, and implementation and effectiveness studies; (20) new provisions for the AFDC-U program; (21) other AFDC Amendments; and (22) demonstration projects. Each section contains an overview of the law followed by a discussion of State options and a discussion of possible areas for regulation by the U.S. Department of Health and Human Services (HHS). The child support provisions of the Act are not discussed, and the portions pertaining to Medicaid and demonstration projects are discussed very briefly. (FMW)

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FAMILY SUPPORT ACT OF 1988:
JOBS Program and Related Amendments
Requirements, Issues and Options

by

Mark Greenberg

Center for Law and Social Policy
November, 1988

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INTRODUCTION

The Family Support Act of 1988 gives each state an extraordinary amount of choice to structure some sort of work/education/training program for AFDC recipients. The law requires each state to set up a Job Opportunities and Basic Skills Program (JOBS) sometime between now and October, 1990. The program must be fully operational throughout the state by October, 1992.

The law sets up a broad outline, but leaves almost every critical decision to the states. As a result, the major choices which will determine whether the programs will be constructive or punitive will be made at the state level.

As states begin to implement the Family Support Act, it is important to keep in mind what the Act does and does not do. It does assure that each state will have a JOBS program. It does provide significantly expanded federal funds for child care to AFDC recipients. It does assure that states which have previously denied AFDC benefits to two parent families must create at least a limited program for families that would be eligible for AFDC-UP (Unemployed Parent) benefits.

The Act does not assure that any individual will actually get any education or training. The Act provides very limited federal funds. If a state chooses to develop an intensive education and training program, the federal funding is not enough to provide services to more than a small percentage of the AFDC caseload. If a state opts to mandate very broad participation, it is unlikely that even a small number of people will get education or training that can help them get out of poverty.

Though each state must have a JOBS Program, the Act does not create, or provide for the creation of any jobs. The Act emphasizes state activities which either enhance the education and skills of recipients, or which compel recipients to locate and accept available jobs. In areas of the country where fairly inexpensive services and mandatory job search requirements for recipients will not lead to employment, the Act may have limited effectiveness.

Finally, the Act does not assure that anyone will get out of poverty. The Act emphasizes preparing people for employment that will make them independent from AFDC. In most states, a job that makes a family ineligible for AFDC may still leave the family deep in poverty.

States can set higher goals than those of the Act. States can choose to emphasize serious skills enhancement, job creation, and planning for jobs that pay enough to get a family out of poverty. But it will be impossible to have results without resources. State planning must realistically consider what can be done with the limited federal funding, and with available

state funds.

Under the best of circumstances, states can hope for modest improvements in employment rates and incomes for a limited number of families. At the other extreme, states lacking effective advocacy and a commitment to serious education and training may emerge with little more than a larger welfare bureaucracy and new mechanisms for sanctioning people. The choices which determine the state's directions must be made in the coming months.

Scope of this Outline

This outline contains an overview of the law in each major area concerning the JOBS Program and related provisions. Where the text says a state "shall" or "must" do something, it is mandatory for the state. Where the text says a state "may" do something, it is a state option.

In each section, a discussion of state options follows the discussion of the law. Some options are explicit in the law; in other cases, the option is implicit, since a decision has to be made by the state in order to run its program.

This text does not provide analysis or recommendations on most state options. In the next six months, the Center on Law and Social Policy will be producing more detailed materials on the Child Support, Education, and Employment and Training aspects of the Family Support Act. The primary purpose of this text is to identify options, to help state advocates begin the process of evaluating state choices.

Each section also contains a discussion of possible areas for regulations by the Department of Health and Human Services (HHS). Where the law specifically requires HHS to write regulations, the text says HHS "must" write regulations. Many of the most critical terms affecting the program are not defined in the law, and they may or may not be addressed in HHS regulations. In these instances, the text says HHS "may" define or clarify an unclear point. HHS proposed regulations, which should be issued by April 13, 1989, may reduce, expand, or otherwise alter some of the options identified in the text.

This outline does not discuss the child support provisions of the Act, and contains only very brief discussions of the Medicaid and Demonstration Project portions. It does not summarize every provision of the Act, but it is intended to address every area where states will need to make implementation decisions in the coming months.

A. TIME FRAMES AND PLANNING

THE LAW

Federal Regulations

The Secretary of Health and Human Services (HHS) must promulgate proposed regulations within 6 months after enactment of the Act, i.e., by April 13, 1989. Final regulations must be published by October 13, 1989.[1]

State Mandated and Early Implementation

The general effective date for the Act is October 1, 1990.[2]

A state may choose to begin implementing earlier. The state may begin operating as soon as the state makes the required changes in its state plan, and notifies the Secretary of its desire to become subject to the law as of the first day of any calendar quarter on or after the date of promulgation of the proposed regulations (or, if earlier, the date on which the regulations were required to be published).[3]

The program may initially operate in only a portion of the state. The state must have the program available in each portion of the state where it is feasible to do so no later than October 1, 1992.[4]

Certain parts of the Act have different effective dates. State legislation may or may not address all these aspects at the same time. The major effective dates to keep in mind are:

Provision	Effective Date	Discussed at
JOBS Program	Oct. 1, 1990, or earlier at state option	A
Indians to exercise JOBS Option	April 13, 1989	R
Preeligibility Fraud Detection	October 1, 1989	U

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[1] Sec. 203(a) [of the Family Support Act of 1988, P.L. 100-485, 102 Stat. 2343.]

[2] Sec. 204(a).

[3] Sec. 204(b)(1)(A).

[4] Sec. 201(b), creating Sec. 482(a)(1)(D)(i) [of the Social Security Act, to be codified at 42 U.S.C. §682(a)(1)(D)(i)].

Changes in Earned Income Disregards	October 1, 1989	U
States may require minor parent to live at home	January 1, 1990	U
Federal Funds for Extended Child Care	April 1, 1990	O
Federal Funds for Extended Medical Care	April 1, 1990	P
States must have an AFDC-U Program	October 1, 1990	T
Participation Requirements for AFDC-U Families	October 1, 1994	B

Contents of the State Plan

A state cannot begin operating the JOBS Program until it submits its state plan.

The state plan must describe how the state intends to implement the program, and that the program will be implemented in accordance with the law. The plan must contain:

a) an estimate of the number of persons to be served;

b) a description of the services to be provided, the needs to be addressed; the extent to which the services are expected to be made available by other agencies; and the extent to which such services are to be provided or funded by the program; and

c) such other information as the Secretary may require by regulation.[5]

The plan must specify whether the state will mandate participation by parents with children younger than age 3.[6]

Components of the state plan which relate to job training and work preparation must be consistent with the coordination criteria specified in the Governor's coordination and special services plan required under Sec. 121 of the Job Training

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[5] Sec. 201(b), creating Sec. 482(a)(1)(B).

[6] Sec. 201(a), amending Sec. 402(a)(19)(C)(iii)(I).

Partnership Act (JTPA).[7]

Public Notice of the State Plan

Not less than sixty days before submission to the Secretary, the state plan must be published and made reasonably available to the general public through local news facilities and public announcements. At the same time, it must be submitted to the state job training coordinating council, for review and comment.[8]

Periodic Review of the State Plan

The state must periodically, but not less than 2 years, review and update its plan.[9] It is not clear whether public notice requirements apply to the periodic reviews.

Preliminary Demographic Study

Each state may undertake an evaluation of demographic characteristics of potential participants, in the 12 month period after enactment of the Act.[10]

If the state does so, the evaluation must be structured to provide accurate and usable information as to the age, family status, educational and literacy levels, duration of eligibility for AFDC, and work experience of potential participants, including actual numbers of people in each category. The evaluation must also give attention to the current and anticipated demands of the labor market(s) in the state, the types of training needed to meet those demands, and any needed changes in the service delivery system.[11]

50% federal financial participation is available for the costs of the demographic study.[12]

Use of data about existing and future jobs

The state must use the services of private industry councils to identify and provide advice on types of jobs available or likely to become available in the service delivery areas, and shall ensure that the state program provides training in any area

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7 Sec. 201(b), creating Sec. 483(a)(1).

8 Sec. 201(b), creating Sec. 483(a)(2).

9 Sec. 201(b), creating Sec. 482(a)(1)(A).

10 Sec. 201(b), creating Sec. 486(a).

11 Sec. 201(b), creating Sec. 486(b), (c).

12 Sec. 201(d), amending Sec. 403(a)(3)(D).

for jobs of a type which are, or are likely to become, available in the area.[13]

STATE OPTIONS

The state must decide:

1) whether to implement at the mandatory implementation date, or at some earlier time;

2) the level of detail for the state plan content;

3) what sort of public input will be involved in the state plan process;

4) whether to exercise the option to do a demographic study in the first year.

It seems unlikely that a state could actually begin implementation earlier than October 1, 1989. The Secretary could promulgate proposed regulations immediately, but it seems more likely to anticipate them in March or April, 1989. The state must then formulate its state plan in light of the regulations, and provide for the 60 days of public notice. If the state plan was completed in April, and the minimum time for public notice was allowed, the state could submit its plan in June, and in theory, begin operating July 1, 1989. Given how tight these time frames are, it seems more likely that states will not implement earlier than the quarter beginning October 1, 1989.

The major advantage in implementing earlier than October, 1990, for a state already operating a program is the opportunity to attain federal funds to reduce the costs of activities currently being funded by the state (subject to the maintenance of effort provisions of the law, see Part Q), or to expand activities.

For all other states, there are a number of disadvantages of expedited implementation. The major disadvantages are:

a) there is some risk in structuring a state's program based on proposed federal regulations, when there may be significant changes in the final regulations to be published six months later;

b) federal funding for transitional child care and Medicaid will not be available until April 1, 1990 (see Parts C, P);

c) the initial demographic study can provide valuable data about how many people are in the target groups, what

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13 Sec. 201(b), creating Sec. 485(e).

kinds of components people need, and what kinds of education and training ought to be provided, but doing the study necessarily takes time.

POSSIBLE HHS REGULATIONS

HHS regulations must address any additional information to be contained in the state plan beyond that required by the Act, and must address the schedule for periodic review and update of the plan. The regulations may also address:

1) the nature of required public notice for the state plan process;

2) details about the contents and methodology for the demographic studies.

B. WHO WILL PARTICIPATE?

THE LAW

In General

States must require non-exempt recipients to participate when the state assures child care, and permit participation by those not required to participate:

a) to the extent the program is available in the political subdivision;

b) to the extent state resources otherwise permit; and

c) except as otherwise provided in the JOBS title of the Act (Title IV-F of the Social Security Act).[14]

Exempt and Non-Exempt Persons

A person is exempt from program participation if she is:

a) ill, incapacitated, or of advanced age;

b) needed in the home because of the illness or incapacity of another household member;

c) a parent or relative personally providing care to a child under 3 (or at state option, an age less than 3 but not less than 1);

d) a parent or relative personally providing care to a child under 6, unless the state guarantees child care and limits participation to 20 hours or less per week;

e) working 30 or more hours per week;

f) a child under 16 or attending full-time an elementary, secondary, vocational, or technical school;

g) pregnant, after the first three months of pregnancy;

h) residing in an area of the state where the program is not available;

i) the second parent in an AFDC-U family who meets the terms of an exemption for caring for a child under 6, unless the state opts to guarantee child care and mandate participation for both parents.[15]

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[14] Sec. 201(a), amending Sec. 402(a)(19)(B)(i).

[15] Sec. 201(a), amending Sec. 402(a)(19)(C),(D).

Participation Quotas for the General AFDC Population

A state's federal financial participation will be reduced to 50% unless the state satisfies federal participation quotas.[16] The quotas, and time frames for measurement are:

Year	Rate	Period of Measurement
FY 90	7%	the fiscal year
FY 91	7%	each half of the fiscal year
FY 92	11%	each quarter of the fiscal year
FY 93	11%	each quarter of the fiscal year
FY 94	15%	each month
FY 95	20%	each month

No penalty will be imposed for a state's failure to meet the standards in FY 90.[17]

What constitutes participation?

The Act does not define participation. It states that mere registration is not sufficient to constitute participation.[18] HHS is expressly authorized to define "participation" in regulations.[19]

How is the rate of participation determined?

The participation rate is determined by first adding a) the average monthly number of people required or allowed to participate who have done so during the computation period; and b) the actual number of people required or allowed to participate who did so during the highest participation months of the computation period. This amount is then divided by twice the average monthly number of people required to participate, not including those required to participate because the state exercised its option as to parents with children under 3 or as to the second parent of a child under 6 in an AFDC-U family.[20]

Example: State A has 30,000 non-exempt recipients, and 5,000 recipients who are non-exempt because the state exercised options to require participation by parents with children under 1, and by both parents in an AFDC-U family. In FY 90, the state begins operating its program, and its average monthly participa-

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16 Sec. 201(c)(2), amending Sec. 403(l)(3)(A),(B).

17 Sec. 201(c)(2), amending Sec. 403(l)(3)(C).

18 Sec. 201(c)(2), amending Sec. 403(l)(3)(B).

19 Sec. 201(c)(2), amending Sec. 403(l)(3)(D).

20 Sec. 201(c)(2), amending Sec. 403(l)(3)(B)(iii).

tion (including exempt volunteers) is 2,000. By the last month of the fiscal year (the month of highest participation), there were 4,000 participants. To determine compliance, add 2,000 (average number) plus 4,000 (month of highest participation). Divide by 60,000 (twice the average number required to participate). 6,000/60,000 = 10%. State A satisfies the requirements for FY 90.

Are participation quota penalties automatic?

The penalties are not automatic. The Secretary may waive the reduction, in whole or in part, if the Secretary finds the state is in compliance with Section 402(a)(19) and Title IV-F, the state has made a good faith effort to achieve the applicable participation rate, and the state has submitted a proposal likely to achieve the applicable rate in the current and subsequent fiscal years.[21]

Target Groups

A state's federal financial participation will be reduced to 50% unless the state makes at least 55% of its expenditures under Title IV-F for individuals in the following target groups:

a) recipients who have received aid for at least 36 of the preceding 60 months;

b) applicants who received aid for at least 36 of the 60 months prior to application;

c) custodial parents under 24 who either:
   i) have not completed high school are not enrolled in high school or its equivalent at the time of application; or
   ii) have had little or no work experience in the preceding year;

d) members of a family in which the youngest child is within 2 years of being ineligible for AFDC because of age (i.e., age 16 in a state that ends AFDC eligibility at age 18).[22]

Priority for Volunteers from Target Groups

Within the federally designated target groups, states must give priority to those who volunteer to participate.[23] However, if a non-exempt person volunteers to participate, she is still

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21 Sec. 201(c)(2), amending Sec. 403(l)(3)(E).

22 Sec. 201(c)(2), amending Sec. 403(l)(2).

23 Sec. 201(a), amending Sec. 402(a)(19)(B)(ii).

subject to sanctions if she then fails to participate without good cause (See Part F).

Possible Changes in Target Groups

The requirement to commit at least 55% of funds to the designated target groups may be waived by the Secretary if a state demonstrates that characteristics of its caseload make it infeasible to meet the requirement, and that the state is targeting other long-term or potential long-term recipients.[24] The statute does not explicitly state whether the requirement to give a priority to target group volunteers applies if a state uses different target groups.

The Secretary is required to submit any recommendations for modifications or additions to the target groups to Congress on a biennial basis.[25]

Participation Quotas for AFDC-U Recipients

Beginning in FY 94, states must satisfy participation quotas for AFDC-U families.[26] To satisfy the requirement, the state must require at least one parent in the family to participate in either:

a) a work supplementation program;

b) a community work experience program;

c) on-the-job training;

d) a state designed work program approved by the Secretary;

e) for parents under 25 who have not completed high school or its equivalent, an educational activity directed at attaining a high school diploma or equivalent.

The parent(s) must participate for at least 16 hours/week, unless the amount of a CWEP obligation, when the AFDC grant, less child support reimbursed the state, divided by the minimum wage, leads to a lesser obligation. (See CWEP discussion at Part J).[27]

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[24] Sec. 201(c)(2), amending Sec. 403(l)(2)(C).

[25] Sec. 201(c)(2), amending Sec. 403(l)(2)(D).

[26] Sec. 201(c)(2), amending Sec. 403(l)(4).

[27] Sec. 201(c)(2), amending Sec. 403(l)(4)(A).

The state must satisfy the following participation quotas[28]:

Year	Rate
FY 94	40%
FY 95	50%
FY 96	60%
FY 97	75%
FY 98	75%

In determining compliance, a principal earner does not count as part of the subject pool during the first two months of aid, if at least one parent engages in intensive job search during that time.[29]

Possibility of Waiver on AFDC-U Quotas

The Secretary may waive any penalty if he finds that:

a) the state is operating a program in conformity with Section 402(a)(19) and the JOBS title;

b) the state made a good faith effort to comply; and

c) the state has submitted a proposal likely to achieve the required percentage of participants for subsequent fiscal years.[30]

JOBS Participation by Noncustodial Parents

The Secretary must permit up to five states to provide JOBS services, on a voluntary or mandatory basis, to noncustodial parents who are unemployed and unable to meet their child support obligations.[31]

STATE OPTIONS

Participation Level

The first major state choice is how many people will participate in the state program. The Act contains a broad participation mandate, followed by enough qualifications to leave the level of participation almost solely up to the state.

The only federal mandates affecting participation levels are the general participation quota and the AFDC-U quota. Since the

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28 Sec. 201(c)(2), amending Sec. 403(l)(4)(B).

29 Sec. 201(c)(2), amending Sec. 403(l)(4)(C).

30 Sec. 201(c)(2), amending Sec. 403(l)(4)(D).

31 Sec. 201(b), creating Sec. 482(d)(3).

AFDC-U quotas don't apply until FY 94, the only practical considerations for initial planning concern the general quotas.

- The severity of the general quota requirement will depend, in part, on how HHS defines "participation". However, even under a strict definition, the level is only 7% in FY 90 and FY 91, and there are no penalties for FY 90. So, a state can comfortably comply with federal standards while engaged in initial planning, and can allow for initial experimentation in program components without being forced to spread resources over too large a group of participants.

Choice of Target Groups

The state must commit 55% of its resources to the federally designated target groups unless the state gets a waiver to use different groups. The state must decide whether it would rather direct its resources at other groups, and must then convince HHS that it meets the federal standards for waiver.

Priorities outside of target groups

Unless the state wishes to limit its program to the federally designated target groups, the state must decide how to allocate services for the slots beyond those committed to the federal target groups.

Treatment of Volunteers

The state must give priority to volunteers in the federal target groups, but must decide whether to also give priority to volunteers out of the federal target groups. The state is free to do so, and the only federal law constraint on running a volunteers-first program is that the state must ensure that 55% of its resources go to the target groups. Even in a volunteers-first program, the state must sanction those non-exempt volunteers who fail to participate without good cause.

Treatment of parents with young children

The state has three options for treatment of parents with young children. The state must decide:

a) whether to require participation by parents with children between age 1 and 3;

b) whether to mandate participation by the second parent in an AFDC-U family with a child under 6; and

c) whether to mandate participation by parents with children age 3 to 6, since these parents are exempt unless the state guarantees child care to them.

Even if the state plans very limited participation, or plans

a priority for volunteers, the scope of these exemptions matters. Whether or not the person volunteers, a non-exempt participant faces sanctions if she fails to participate without good cause.[32] An exempt participant who fails to participate without good cause is only denied priority, so long as other persons are actively seeking to participate.[33]

Treatment of AFDC-U families

Since the AFDC-U quotas do not take effect until FY 94, the state's first choice is whether to address the AFDC-U participation requirements at this time, or wait until it is closer to 1994. A wait-and-see approach is preferable because:

a) AFDC-U families already have a connection to the work force, and tend to be least in need of services;

b) there is a tension between directing resources at AFDC-U families, and directing them to the target groups, since they are different populations; it makes more sense to focus on the target groups initially, since the target group standards must be met throughout early implementation;

c) it is entirely possible that the law will change in response to early experience, making it inadvisable to structure a state's program in response to a requirement which may be substantially altered before 1994.

If the state does begin imposing requirements on the AFDC-U population to meet the terms of the AFDC-U quota requirements, the state must decide:

a) whether to impose requirements on one or both parents;

b) which components to use to satisfy the requirements; and

c) whether to use job search in lieu of another component during the first two months of aid.

POSSIBLE HSS REGULATIONS

HHS must define "participation". The definition will have a major impact on the effect of the participation quota requirements.

HHS regulations may address:

1) when a state can decline to provide JOBS in a political

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[32] Sec. 201(a), amending Sec. 402(a)(19)(G).

[33] Sec. 201(a), amending Sec. 402(a)(19)(B)(iii).

subdivision;

2) the definition of "advanced age" for purposes of an exemption;

3) when federal target group requirements can be waived based on infeasibility;

4) how to calculate whether a state spends 55% of its resources on members of target groups;

5) the circumstances under which participation rate sanctions will be waived or imposed;

6) alternative work programs that a state may provide to its AFDC-U population;

7) requirements for states providing or mandating JOBS services for noncustodial parents.

8) whether the right or requirement to participate changes if a person ceases to meet the target group definition;

9) what does "little" work experience mean in the description of the target group for custodial parents under 24?

C. THE RANGE OF SERVICES

THE LAW

The Act mandates that states make available a broad range of services, which shall include:

a) educational activities, including high school or equivalent education (combined with training as needed), basic and remedial education to achieve a basic literacy level, and education for individuals with limited English proficiency.

b) job skills training;

c) job readiness activities to help prepare participants for work;

d) job development and job placement.[34]

States must also include at least two of the following:

a) group and individual job search;

b) on the job training (OJT);

c) work supplementation;

d) community work experience (CWEP) or another work program approved by the Secretary.[35]

The state may also offer postsecondary education, and such other education, training, and employment activities as may be determined by the state and allowed by HHS regulations.[36]

There are certain circumstances under which education is mandated (see Part H). Otherwise, the choice about when a participant engages in a particular activity is left to be resolved between the state and the participant.

STATE OPTIONS

1) the state must decide which of the four programs (job search, OJT, work supplementation, CWEP) to offer. The state may choose to provide more than two of these four programs.

2) The state must decide whether to offer postsecondary

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[34] Sec. 201(b), creating Sec. 482(d)(1)(A)(i).

[35] Sec. 201(b), creating Sec. 482)(d)(1)(A)(ii).

[36] Sec. 201(b), creating Sec. 482(d)(1)(B).

education.

3) The state must decide whether to provide other education, training, and employment activities. This may depend, in part, on the nature of what is permitted under HHS regulations.

4) The bill contains specifications for work supplementation, job search, and CWEP (discussed in separate sections to follow). All the other terms are not defined by the bill. Unless the Secretary addresses their content in regulations, the state will have to decide what they mean.

5) The Act does not define what constitutes providing a service. Unless the Secretary specifies this in regulations, the state will have to decide how extensively to provide each of the services, i.e., how many job skills slots, how many work supplementation slots, etc.

POSSIBLE HSS REGULATIONS

HHS regulations must address what "other education, training, and employment activities" are permitted under the state programs.

HHS regulations might address some or all of the undefined terms concerning the range of services, i.e., what constitutes:

1) making a service "available";

2) educational activities;

3) basic literacy level;

4) limited English proficiency;

5) job skills training;

6) job readiness activities;

7) job development;

8) job placement;

9) on the job training.

D. WHO PROVIDES THE SERVICES

THE LAW

The state may carry out JOBS activities directly, or through arrangements or contracts with:

a) administrative entities under Section 4(2) of JTPA;

b) state and local education agencies;

c) other public agencies or private organizations (including community based organizations as defined in section 4(5) of JTPA).[37]

These arrangements/contracts may cover any service or activity, including outreach, to be made available under the program, to the extent it is not otherwise available on a nonreimbursable basis.[38]

The state and private industry councils must consult on development of arrangements and contracts.[39]

STATE OPTIONS

States face major choices on virtually every aspect of program administration and operation as to whether to directly deliver the service, or to contract with another entity.

POSSIBLE HSS REGULATIONS

HHS regulations may clarify any limitations on states contracting out their responsibilities, and may clarify the relationship between a state contracting out and the duty of states to operate their AFDC programs through a single state agency.

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37 Sec. 201(b), creating Sec. 485(a).

38 Sec. 201(b), creating Sec. 485(b).

39 Sec. 201(b), creating Sec. 485(c).

E. HOW A PARTICIPANT'S ACTIVITIES AND SERVICES ARE CHOSEN

THE LAW

Orientation

The state must inform all applicants and recipients of services for which they are eligible, obligations of the state, and the rights, responsibilities, and obligations of participants.[40] The state must also inform of grounds for exemption, consequences of refusal to participate if not exempt, and other appropriate information.[41]

The state must provide information as to types and locations of reasonably accessible child care, inform participants that assistance is available to help them select appropriate care, and on request, assist participants in obtaining child care.[42]

The state must give AFDC recipients a description of how to enter the program, and how to indicate desire to participate, within one month of this orientation.[43]

Assessment

The state must make an initial assessment of the educational, child care, other supportive service needs, skills, prior work experience, employability, family circumstances of each participant. The state may also review the needs of any child of the participant.[44]

Employability Plan

On the basis of the assessment, the state must, in consultation with the participant, develop an employability plan, which will explain the services to be provided by the state, activities in which the participant will take part, including child care and other supportive services, and will set forth an employment goal. The plan must, to the maximum extent possible, and consistent with Sec. 482 of the Act, reflect the preferences of the participant.[45]

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40 Sec. 201(b), creating Sec. 482(c)(2).

41 Sec. 201(b), creating Sec. 482(c)(4).

42 Sec. 201(b), creating Sec. 482(c)(3).

43 Sec. 201(b), creating Sec. 482(c)(5).

44 Sec. 201(b), creating Sec. 482(b)(1)(A).

45 Sec. 201(b), creating Sec. 482(b)(1)(B).

The employability plan is not a contract.[46]

Option for Contract

After assessment and development of the employability plan, the state may require the participant to negotiate and enter into an agreement specifying such matters as the participant's obligations under the program, the duration of participation, and the activities to be conducted and services to be provided during participation.[47]

Option for Case Manager

The state may assign a case manager to the participant and participant's family. The case manager must be responsible for assisting the family to obtain any services needed to assure effective participation.[48]

STATE OPTIONS

The state must decide:

1) what will be involved in the assessment;

2) who will conduct the assessment;

3) whether to review the needs of a participant's child during the assessment;

4) what will be contained in the employability plan;

5) who is involved in preparing the employability plan;

6) whether to have a contract in addition to the employability plan;

7) whether to assign a case manager.

POSSIBLE HSS REGULATIONS

HHS regulations might address the content of the assessment, employability plan, or contract; minimum qualifications for persons conducting assessment and developing employability plans; and minimum standards for orientation.

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46 Sec. 201(b), creating Sec. 482(b)(1)(B).

47 Sec. 201(b), creating Sec. 482(b)(2).

48 Sec. 201(b), creating Sec. 482(b)(3).

F. DISPUTE RESOLUTION AND SANCTIONS

THE LAW

Sanctions in General

States must sanction non-exempt persons who fails without good cause to participate in the program or to accept bona fide offers of employment to which the person is able to engage.[49]

Exempt persons are not sanctioned, but exempt persons who drop out of the program without good cause after having commenced participation will be denied priority so long as other individuals are actively seeking to participate.[50]

Extent of Sanction

The needs of the offending individual will be removed from the grant, and if the offender is the parent or caretaker, payments for the family will be made in the form of protective payments, unless the state is unable to locate an appropriate payee after making reasonable efforts.[51]

In an AFDC-U family, the needs of the spouse will also be excluded from the grant, unless the spouse is participating in JOBS.[52]

Length of the Sanction

In the first case, the sanction lasts until the failure to comply ceases.

In the second case, the sanction lasts for 3 months, or until the failure to comply ceases, whichever is longer.

In the third and subsequent cases, the sanction lasts for 6 months, or until the failure to comply ceases, whichever is longer.[53]

Good Cause

The Act does not offer a comprehensive definition of good cause. It does specify that no sanction will be imposed:

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[49] Sec. 201(a), amending Sec. 402(a)(19)(G).

[50] Sec. 201(a), amending Sec. 402(a)(19)(B)(iii).

[51] Sec. 201(a), amending Sec. 402(a)(19)(G)(i)(I).

[52] Sec. 201(a), amending Sec. 402(a)(19)(G)(i)(II).

[53] Sec. 201(a), amending Sec. 402(a)(19)(G)(ii).

a) in the case of a parent or caretaker personally providing care to a child under 6, if the employment would require the individual to work more than 20 hours per week;

b) on the basis of refusal to participate or to accept employment, if child care (or day care for any incapacitated individual living in the home) is necessary for participation or to accept employment, the child care is not available, and the state fails to provide the care; and

c) on the basis of failure to accept employment, if the employment would result in a net loss of cash income to the family.[54]

Conciliation and Hearing Rights

Each state must establish a conciliation procedure for resolving disputes about program participation, and for a hearing with respect to the dispute if it is not resolved through conciliation. The hearing procedure may be specially established for JOBS disputes, or may be the state's ordinary fair hearing procedure. In either case, the hearing must comply with Goldberg v. Kelly, 397 U.S. 254 (1970), and there must be a right to a fair hearing before the individual is sanctioned.[55]

STATE OPTIONS

A state may not run a program without sanctions for non-exempt participants. However, a state can take a number of actions to reduce the frequency and harshness of sanctions:

1) States may have considerable flexibility in defining "good cause".

2) States can provide clear and periodic notice of what conduct will cure the sanction. The Act requires a written reminder of the sanction and the option to end the sanction by terminating the failure after three months.[56] The state is free to provide more frequent and more detailed notice. For example, every notice of the grant for a sanctioned family could remind the family that the grant is reduced because of the sanction, and could explain what must be done to remove the sanction.

3) States can create an extensive and serious conciliation procedure genuinely aimed at resolving disputes before they reach

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[54] Sec. 201(a), amending Sec. 402(a)(19)(G)(iv),(H).

[55] Sec. 201(b), creating Sec. 482(h).

[56] Sec. 201(a), amending Sec. 402(a)(19)(G)(iii).

the sanction stage.

4) States must decide whether to use their existing hearing procedure or a new one for hearing JOBS disputes. States should consider which process is more likely to be able to effectively consider and resolve the types of issues that arise around JOBS participation.

The importance of conciliation procedures goes beyond the prevention of sanctions. Conciliation can be a way to resolve program disputes quickly and effectively without the time and expense of fair hearings. A significant limitation of the fair hearing process is that it takes weeks or months to have a hearing and get a decision. On numerous issues about program participation, e.g., adequacy of child care, nature of placement, work or training conditions, neither the participant nor the JOBS administrators can afford to wait months for a decision. So, states need to develop a way to have program disputes heard and resolved quickly. Such a procedure cannot, of course, limit a participant's fair hearing rights.

POSSIBLE HSS REGULATIONS

HHS regulations may address:

1) what constitutes "good cause";

2) what constitutes "conciliation";

3) who performs conciliation;

4) when must conciliation be available;

5) what sort of hearing structure a state may use if it opts not to use its existing structure;

6) how repeat offenses are treated when a person becomes a recipient on more than one occasion;

7) what kind of notice is required at the time of sanction and as a reminder notice.

G. PROVISIONS GENERALLY APPLICABLE TO COMPONENTS

THE LAW

General Limitations

States must assure that:

a) Each experience takes into account the physical capacity, skills, experience, health and safety, family responsibilities, and place of residence of the participant;

b) No participant will be required to travel an unreasonable distance or be away from home overnight without consent;

c) There is no discrimination on the basis of race, sex, national origin, religion, age, or handicapping condition;

d) Conditions of participation are reasonable, taking into account the participant's proficiency and child care and other supportive service needs;

e) Appropriate workers' compensation and tort claims protection are provided, on the same basis as they are provided to other individuals in the state in similar employment (in accordance with HHS regulations).[57]

Displacement Protections

No work assignment under the program may result in:

a) displacement of any currently employed worker or position (including partial displacement such as a reduction in hours of nonovertime work, wages, or employment benefits) or result in impairment of existing contracts for services or collective bargaining agreements;

b) employment or assignment of a participant or filling a position when any other individual is on layoff from the same or equivalent position, or the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the effect of filling the vacancy so created with a participant under the program;

c) any infringement of promotion opportunities of currently employed individuals.[58]

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[57] Sec. 201(b), creating Sec. 484(a),(b).

[58] Sec. 201(b), creating Sec. 484(c).

Grievance and Complaint Procedures

States must establish (pursuant to regulations of HHS and the Department of Labor) a grievance procedure for hearing and resolving claims that an assignment violates the antidisplacement provisions. The decision can be appealed to the Secretary of Labor.[59]

The state shall hear complaints as to working conditions and worker's compensation, and to wage rates under CWEP programs in the state's fair hearing process, but there will be a provision for appealing those decisions to the Secretary of Labor, under such conditions as are specified in regulations to be promulgated.

STATE OPTIONS

The state must decide:

1) when to provide workers' compensation and tort protections;

2) what, if any, procedure will be put in place to monitor for displacement and ensure that displacement is not occurring;

3) how to set up its grievance procedure.

POSSIBLE HSS REGULATIONS

1) HHS regulations must address when workers' compensation and tort claims protection must be provided.

2) HHS, in joint regulations with the Department of Labor, must specify the terms and nature of the displacement grievance procedure.

3) The joint regulations must also set forth the conditions under which a participant may appeal a work conditions fair hearing to the Department of Labor.

4) The joint regulations must implement and carry out the provisions of the Act relating to general limitations on assignments and displacement.

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[59] Sec. 201(b), creating Sec. 482(d)(1).

H. EDUCATIONAL ACTIVITIES AND REQUIREMENTS

THE LAW

Custodial Parents under 20

Custodial parents under 20 who have not completed high school or its equivalent must be required to participate in an educational activity:

a) to the extent the program is available in the political subdivision involved; and

b) if state resources otherwise permit.[60]

This requirement extends to parents who are otherwise exempt from JOBS because they are personally caring for young children. The state may also choose to require participation in education on a full time basis (as defined by the educational provider) notwithstanding the general limit on full-time program participation for parents with young children.[61]

However, states:

a) may exempt those under 18 from the educational requirements, under criteria adopted in accordance with HHS regulations; and

b) may require a parent 18 or 19 to participate in work or training if the parent fails to make good progress in the educational activity or the state determines, pursuant to an educational assessment, that participation is inappropriate for the parent.[62]

Persons over 20 lacking a high school diploma or equivalent

If the state requires participation by an individual over 20 who lacks a high school diploma or equivalent, the state must include educational activities consistent with the individual's employment goals as a component, unless:

a) the individual demonstrates a basic literacy level; or

b) the individual's employability plan identifies a long-term employment goal that does not require a high school

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60 Sec. 201(a), amending Sec. 402(a)(19)(E)(i).

61 Sec. 201(a), amending Sec. 402(a)(19)(E)(i),(ii)(I).

62 Sec. 201(a), amending Sec. 402(a)(19)(E)(ii)(II),(III).

diploma or equivalent.[63]

Any other services or activities to which a participant is assigned may not be permitted to interfere with participation in the appropriate educational activity.

Persons already in higher education

A parent or caretaker, or a child, already attending an institution of higher education, or a school of vocational or technical training, not less than part time, may continue that schooling, and have it constitute satisfactory participation in JOBS, if:

a) the school or training is consistent with the individual's employment goals; and

b) she is making satisfactory progress.[64]

Any other activities to which she is assigned may not be permitted to interfere with the training or education.[65]

The costs of the school and training are not federally reimburseable, but the costs of day care, transportation, and other services necessary (as determined by the state) for attendance are eligible for federal reimbursement.[66]

Persons wanting higher education

Higher education is not a mandatory service for states to provide under the JOBS Program. However, a state may offer postsecondary education "in appropriate cases."[67]

Persons with limited English proficiency

State JOBS Programs must include education for individuals with limited English proficiency.[68] The statute does not expressly discuss when such education must be provided.

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63 Sec. 201(b), creating Sec. 482(d)(2).

64 Sec. 201(a), amending Sec. 402(a)(19)(F)(i).

65 Sec. 201(a), amending Sec. 402(a)(19)(F)(ii).

66 Sec. 201(a), amending Sec. 402(a)(19)(F)(iii),(iv).

67 Sec. 201(b), creating Sec. 482(d)(1)(B).

68 Sec. 201(b), creating Sec. 482(d)(1)(A)(i)(I).

STATE OPTIONS

Parents under 20

The state must decide:

1) whether, and under what circumstances, to exempt parents under 18 from mandatory educational requirements;

2) what constitutes good progress when a parent is participating in education;

3) what should happen to a parent under 20 who fails to make good progress, i.e., whether to impose work/training requirements on whether another response is more appropriate, e.g., educational counseling, a different education program, temporary deferral from program participation;

4) under what circumstances, if any, a young parent will be placed in work or training instead of education because participation in education is "inappropriate." Note that this decision must be based on an educational assessment.

5) whether to mandate participation on a full time basis for parents with young children;

6) what kind of educational activity will be required;

7) what will be involved in an educational assessment, and who will do it;

8) when a participant has satisfied educational requirements.

9) whether to escape from the requirements to provide education, at least in part, by determining that state resources are too limited to meet the requirements.

Persons Over 20 without a high school education

The state must decide:

1) whether to require participation by people over 20 lacking a high school diploma or equivalent;

2) what constitutes a basic literacy level, and how to measure basic literacy;

3) whether to extend literacy testing to persons under 20, and persons over 20 who have a high school diploma or equivalent;

4) whether to impose additional requirements on persons participating in an educational activity;

5) how to treat people who lack English language proficiency;

6) under what circumstances an employment goals is one that does not require a high school diploma.

The size of the pool of people needing basic education will largely depend on what kind of literacy testing the state chooses. If the state primarily looks at whether people have a high school diploma, it will identify a much smaller group than if it focuses on actual literacy needs for jobs that pay enough to get a family out of poverty, or get a family off AFDC.

If a state does an initial demographic study, it may gain valuable information about how many people over 20 need education, and about gaps between actual education levels and needed education for jobs being targeted in the state program. Absent this kind of information, it would seem difficult for the state to make informed decisions about the goals of education or the extent to which state JOBS resources need to be committed to education.

Persons already in Higher Education

The state must decide:

1) whether to let participation in self-initiated higher education constitutes satisfactory participation;

2) which supportive services are necessary for participation in self-initiated education;

3) whether to impose other requirements on a person attending self-initiated education.

States should have an interest in implementing the option to treat self-initiated education as JOBS participation, because:

a) an individual engaged in self-initiated education will count toward satisfying participation quotas, even though the state isn't paying for the cost of the education; and

b) without implementing the option, states may be forcing people to quit education in order to enter into a program the state will have to pay for.

The state's interest in meeting participation quotas will not be advanced by mandating participation in another activity while a person is participating in education.

Persons wanting Higher Education

1) The state must decide whether to offer higher education under any circumstances.

2) If a state chooses to offer higher education, it must decide what to offer.

3) If a state chooses to offer higher education, it must decide when a case is "appropriate" for higher education.

Persons with limited English Proficiency

The state must decide:

1) what constitutes limited English proficiency.

2) how and when to test for English proficiency;

3) whether to provide English language training for all or some persons with limited English proficiency.

POSSIBLE HSS REGULATIONS

HHS regulations must provide criteria for states to determine when to exempt persons under 18 from educational requirements.

A number of undefined terms might be addressed in HHS regulations. HHS might address:

1) what is the equivalent of a high school education;

2) what constitutes good progress;

3) when are educational activities inappropriate for a young parent;

4) what is the content of an educational assessment;

5) what showing a state must make to avoid providing education to young parents based on limited resources;

6) what kind of education activities must be provided;

7) what supportive services for a parent in education are entitled to federal matching funds;

8) what constitutes a basic literacy level;

9) when does an employment goal not require a high school diploma;

10) what is an appropriate case for postsecondary education;

11) what constitutes limited English proficiency;

12) what happens to a person with limited English proficiency.

I. WORK SUPPLEMENTATION

THE LAW

In a work supplementation program, the funds that would otherwise be paid to families as AFDC grants are instead used to subsidize jobs for participants.[69]

A state may mandate that any eligible individual take an available supplemented job. An eligible individual is a person in a category which the state determines should be eligible for the program, and who would be eligible for AFDC but for the operation of the work supplementation program.[70]

A supplemented job is one provided by the state or local agency, or one provided by any other employer for which all or part of the wages are paid by the state or local agency. The state may provide or subsidize any job which the state determines to be appropriate.[71]

A state may adjust levels of the standard of need, and may vary the standard of need for categories of recipients or areas of the state when appropriate for carrying out a work supplementation program.[72] A state may adjust aid paid to categories of recipients to offset increases in benefits from other needs-related programs for participants.[73] A state may reduce or eliminate the amount of earned income to be disregarded, and may provide the $30 and 1/3 earned income disregard without regard for the law's limit of that disregard to a four month period.[74]

Wages paid under a work supplementation program are considered earned income.[75]

The state or local agency need not provide employee status to a work supplementation worker, or provide that an eligible individual filling a position provided by another entity be provided employee status by that entity, during the first 13

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69 Sec. 201(b), creating Sec. 482(e)(1).

70 Sec. 201(b), creating Sec. 482(e)(3).

71 Sec. 201(b), creating Sec. 482(e)(3)(C).

72 Sec. 201(b), creating Sec. 482(e)(2)(C),(D).

73 Sec. 201(b), creating Sec. 482(e)(2)(E).

74 Sec. 201(b), creating Sec. 482(e)(2)(G).

75 Sec. 201(b), creating Sec. 482(e)(5)(B).

weeks the individual fills that position.[76]

Anyone participating in the work supplementation program, and the children or relatives who would be receiving AFDC but for the program, are considered AFDC recipients for Medicaid purposes.[77]

STATE OPTIONS

The state must decide:

1) whether to have a work supplementation program;

2) whether a work supplementation program is voluntary or mandatory;

3) who will be eligible for the program;

4) which jobs are appropriate for work supplementation;

5) whether to assure employee status for a work supplementation worker as soon as the placement begins, or at what later stage employee status begins;

6) what, if any, protections are built into a work supplementation program to prevent employers from discharging workers as soon as their supplementation expires;

7) whether to make adjustments to its need standard, payment level, and income disregards for work supplementation participants.

POSSIBLE HSS REGULATIONS

The work supplementation provisions of the Act reflect prior law, except that under prior law:

a) work supplementation placements were voluntary;

b) provision of Medicaid was optional; and

c) states did not have an option to waive retroactive budgeting.

HHS regulations may address these new provisions, but the agency may otherwise reiterate current regulations.

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[76] Sec. 201(b), creating Sec. 482(e)(5)(A).

[77] Sec. 201(b), creating Sec. 482(e)(6).

J. COMMUNITY WORK EXPERIENCE PROGRAM (CWEP)

THE LAW

In general

A participant in a CWEP placement works a number of hours per month for a state-designated employer as a condition of continuing to receive her grant.

Maximum Hours of Obligation in the First Nine Months of an Assignment

The maximum hours of obligation for a month are calculated by taking the AFDC grant, less the portion of aid for which the state is reimbursed by a child support collection, and divided by the greater of the Federal or applicable state minimum wage.[78]

Example: Ms. Smith gets an AFDC grant of $300. The state is reimbursed by a child support collection of $100. The state and federal minimum wages are both $3.35/hour. The hours of obligation will be $200/$3.35, or 59.7.

Maximum Hours after the First Nine Months of an Assignment

After a person has been in a CWEP assignment for nine months, she may not be required to continue the assignment unless the maximum number of hours is no greater than the AFDC grant, less the amount for which the state is reimbursed by child support, divided by the highest of:

a) the federal minimum wage;

b) the applicable state minimum wage; or

c) the rate of pay for individuals employed in the same or similar occupations by the employer at the same site.[79]

Nature of CWEP Placement

A CWEP placement must be limited to projects "which serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care. To the extent possible, the prior training, experience, and skills of a recipient shall be used in

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[78] Sec. 201(b), creating Sec. 482(f)(1)(B)(i).

[79] Sec. 201(b), creating Sec. 482(f)(1)(B)(ii).

making appropriate work experience assignments."[80]

Reassessment

After each six months of participation in CWEP, and at the end of each assignment, the state must provide a reassessment, and revision, as appropriate, of the individual's employability plan.[81]

Limit on CWEP Sanctions

The state must coordinate CWEP, job search, and other employment related activities so that job placement has priority over participation in CWEP, and so that individuals eligible to participate in more than one such program are not denied AFDC on the grounds of failure to participate in one such program if they are actively and satisfactorily participating in another.[82]

On its face, this language seems to say that if a participant has CWEP and job search responsibilities, and complies with job search, she cannot be sanctioned for failure to comply with CWEP.

STATE OPTIONS

The state must decide:

1) whether to have a CWEP component;

2) the size of its CWEP component;

3) whether to limit CWEP placements in accordance with criteria that involve higher standards than the Act, e.g., limit to placements that actually provide training, limit to placements where there is some hope of actually being hired, limit to public agencies and non-profits;

4) whether to determine CWEP hours in accordance with a more generous formula than that in the Act, since the Act's formula only specifies maximum hours of obligation, e.g., set a lower maximum number of hours per week or month, or use a higher figure than the minimum wage for the hours/month calculation, such as the prevailing wage;

5) whether to limit criteria for placing a participant in CWEP to the particular categories where CWEP is claimed to provide a benefit, i.e., persons with little or no recent work

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[80] Sec. 201(b), creating Sec. 482(f)(1)(A).

[81] Sec. 201(b), creating Sec. 482(f)(2).

[82] Sec. 201(b), creating Sec. 482(f)(3).

history.

POSSIBLE HSS REGULATIONS

HHS regulations must address what costs attributable to CWEP programs are entitled to federal participation.

There are a number of questions about how to calculate maximum hours of obligation that may be addressed in regulations. The Act does not explicitly state:

a) whether the hours of obligation are reduced by any support paid in the month, or just current support;

b) whether the hours of obligation are reduced by the amount of the state reimbursement which is passed through to the family in the form of the $50 disregard;

c) which month of support is considered if the state budgets AFDC prospectively;

d) how fractional hours are counted.

Regulations may also address what is required in a six-month reassessment, and under what circumstances the reassessment should lead to assignment to an activity other than CWEP.

K. JOB SEARCH

THE LAW

Applicability to Applicants and Recipients

States may operate job search programs for non-exempt applicants and recipients.[83] With the possible exception of AFDC-U applicants (see Part T), this is the only statutory authority for imposing JOBS requirements on applicants.

First Eight Week Period

A state may impose job search, for a period of not more than eight weeks, at the time of application. This requirement may not be used as a reason to delay the eligibility determination or delay making payment.[84]

An individual may not be required to participate in job search for more than three weeks before the state conducts its assessment.[85]

Second and Subsequent Eight Week Periods

After the initial eight week period, the state may require additional job searches, but for no more than eight more weeks in any period of twelve months.[86]

Additional Job Search Possibilities

Job search after the periods described above may only be required in combination with some other education, training, or employment activity.[87]

Job search may not be treated, for any purpose, as an activity under the program, if the individual has participated in the job search program for four out of the preceding twelve months.[88]

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83 Sec. 201(b), creating Sec. 482(g)(2).

84 Sec. 201(b), creating Sec. 482(g)(2)(A).

85 Sec. 201(b), creating Sec. 482(g)(2).

86 Sec. 201(b), creating Sec. 482(g)(2)(B).

87 Sec. 201(b), creating Sec. 482(g)(2).

88 Sec. 201(b), creating Sec. 482(g)(3).

Total Permissible Job Search

It is not entirely clear how the provisions relating to length of job search are to be read together. They appear to mean:

a) in the initial year of application, job search, with no other activity, may be required for up to 16 weeks;

b) in subsequent years, job search alone may be required for up to 8 weeks, after which the state may either require job search along with another activity for the remainder of 4 months, or a state can permit the recipient to satisfy program requirements by choosing job search for the remainder of four months.

Contents of Job Search

The Act does not specify what can be required or provided in job search.

STATE OPTIONS

The state must decide:

1) whether to have a job search component;

2) whether to mandate job search before case approval;

3) to what extent job search will be unsupervised;

4) whether job search will be combined with job club workshops, and the contents of such workshops;

5) whether to require a specified number of contacts per week, and if so, how many contacts are required for each participant;

6) whether job search requirements should vary with such factors as prior work experience, area of the state, local unemployment rate;

7) what, if any, sort of verification requirements will be imposed on job search participants.

POSSIBLE HSS REGULATIONS

HHS regulations may address:

1) minimum or maximum requirements for what constitutes a job search;

2) the time frames for when job search counts as a permissible program activity.

L. CHILD CARE WHILE RECEIVING AFDC

THE LAW

Child Care Entitlement

It is not entirely clear when a recipient is entitled to child care. The law says states must guarantee child care:

a) for each family with a dependent child requiring such care, to the extent that such care is determined by the state agency to be necessary for an individual in the family to accept employment or remain employed; and

b) for each individual participating in an education and training activity (including a program that meets the requirements of Section 402(a)(19) and the JOBS title) if the state approves the activity and determines that the individual is satisfactorily participating in the activity.[89]

Taken literally, this language says there is a right to child care:

a) whenever necessary to accept or keep employment, however the person gets the job; and

b) whenever the person is satisfactorily participating in an approved education and training activity.

However, the sanctions provision of the law only provides that lack of child care is good cause for failure to participate if child care is necessary for an individual to participate or accept employment, such care is not available, and the state fails to provide such care.[90]

Method of Providing Care

The state agency may choose to guarantee child care by:

a) providing the care directly;

b) arranging the care through providers by purchase of service contracts or vouchers;

c) providing cash or vouchers in advance to the caretaker relative in the family;

d) reimbursing the caretaker relative; or

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89 Sec. 301, amending Sec. 402(g)(1)(A).

90 Sec. 201(a), amending Sec. 402(a)(19)(G)(iv)(II).

e) adopting such other arrangements as the agency deems appropriate.[91]

Required and Permitted State Expenditures

The state must pay, at least, the lesser of:

a) the actual cost of child care; or

b) the dollar amount of the child care disregard, i.e., $175 per month for a child over 2, $200 for a child under 2.

The state may pay a greater amount, so long as it does not exceed the applicable local market rate (as determined by the state in accordance with the Secretary's regulations).[92]

Example: The local market rate for child care for children over 2 is $250 per month in State A.

a) Ms. Smith has child care expenses of $100 a month. The state must pay those expenses (or provide care).

b) Ms. Jones has child care expenses of $225 a month. The state may meet those expenses, since they are less than the local market rate. However, the state may limit its expenditure to $175 (the amount of the AFDC child care disregard). If Ms. Jones is unable to meet her child care costs, the state has a duty to guarantee care, but does not have a duty to fully fund the care she had chosen.

Orientation about Child Care Rights

During orientation, the state must, directly or through arrangements with others, provide information as to types and locations of reasonably accessible child care, inform participants that assistance is available to help them select appropriate care, and on request, assist participants in obtaining child care.[93]

No Change in Method that Disadvantages Families

The state may not make any change in its method of reimbursing child care costs which has the effect of disadvantaging families receiving aid under the state plan on the date of

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91 Sec. 301, amending Sec. 402(g)(1)(B).

92 Sec. 301, amending Sec. 402(g)(1)(C).

93 Sec. 201(b), creating Sec. 482(c)(3).

enactment of the Act, by reducing their income or otherwise.[94]

Child Care Standards

When the state pays for child care, it must ensure that:

a) the care meets applicable standards of state and local law;

b) the entity providing the care allows parental access;

c) center-based care is subject to state and local requirements to ensure basic health and safety, including fire safety protections.[95]

The state must "endeavor" to develop guidelines for family day care.[96]

$13,000,000 is authorized for HHS to make grants to states to improve child care licensing and registration requirements and procedures, and to monitor child care provided to AFDC children. States must provide at least 10% matching funds.[97]

Report to Congress

States must provide HHS with a description of state and local child care requirements and guidelines. HHS must report to Congress by October 1, 1992 about their content.[98]

Treatment of Child Care Benefits

The value of child care provided or received may not be treated as income for purposes of any other Federal or federally-assisted program that bases eligibility for or amount of benefits on need.[99]

Coordination Requirements

State child care activities must be coordinated with existing early childhood education programs, including Head Start, pre-school programs under Chapter 1 of the Education

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94 Sec. 301, amending Sec. 402(g)(1)(D).

95 Sec. 301, amending Sec. 402(g)(3)(B),(4).

96 Sec. 301, amending Sec. 402(g)(4).

97 Sec. 301, amending Sec. 402(g)(6).

98 Sec. 301, amending Sec. 402(g)(4),(5).

99 Sec. 301, amending Sec. 402(g)(1)(E).

Consolidation and Improvement Act of 1981, and school and nonprofit child care programs.[100]

STATE OPTIONS

The state must decide:

1) how child support will be guaranteed;

2) whether to pay local market rates for care;

3) what are local market rates;

4) when care is necessary;

5) what requirements ensure basic health and safety for center-based care;

6) whether to develop requirements or guidelines for family day care, and if so, what content will the requirements or guidelines have;

7) whether to seek federal funding for improved licensing, registration, and monitoring of care;

8) how to coordinate child care activities with existing early childhood education programs;

9) whether orientation about child care will be provided by the state or by another entity, such as a child care resource and referral agency.

POSSIBLE HSS REGULATIONS

HHS regulations must address how states calculate local market rates.

HHS regulations may clarify:

1) when a state must provide child care;

2) what health and safety standards must be imposed on center-based care;

3) what constitutes "endeavoring" to establish guidelines for family day care;

3) what coordination is required with early childhood education programs;

4) the terms under which funds are available for improve-

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[100] Sec. 301, amending Sec. 402(g)(7).

ments in state licensing and registration procedures, and for state monitoring.

M. SUPPORTIVE SERVICES OTHER THAN CHILD CARE

THE LAW

In addition to child care, the state must provide payment or reimbursement for transportation and other work-related expenses, including work related supportive services, as the state determines are necessary to enable the person to participate in the JOBS program.[101] Note that this provision is limited to providing such services during JOBS participation, and is therefore narrower than the child care provision.

STATE OPTIONS

The state must decide:

1) which expenses, in addition to transportation, are work-related expenses for which the state will meet a participant's costs;

2) whether to meet costs by providing advance payment or reimbursement;

3) how to meet transportation costs, i.e., per mile, per cost of public transportation.

4) when expenses are necessary for participation in JOBS.

POSSIBLE HSS REGULATIONS

HHS regulations may clarify which expenses are subject to federal participation as necessary for program participation.

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101 Sec. 301, amending Sec. 402(g)(2).

N. SUPPLEMENTING LOST INCOME FOR FORMER RECIPIENTS

THE LAW

States may not sanction someone for failing to accept employment if the employment would result in a net loss of cash income to the family.[102] The Act allows federal matching funds, at the Medicaid rate, for any costs incurred to comply with this provision. This means states may choose to supplement the income of someone losing AFDC as a result of accepting a job that results in a net loss of cash income.

STATE OPTIONS

1) The state may have discretion in defining what constitutes a net loss of cash income.

2) The state may choose whether to supplement the earnings of someone who would otherwise have a net loss of cash income from a job.

POSSIBLE HSS REGULATIONS

HHS regulations may define what constitutes a net loss of cash income.

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102 Sec. 201(a), amending Sec. 402(a)(19)(H).

O. EXTENDED ELIGIBILITY FOR CHILD CARE

THE LAW

Effective April 1, 1990, states must provide up to 1 year of child care assistance for persons losing AFDC due to employment.

Who is entitled?

A participant will be entitled to care if:

a) the state determines the care to be necessary for employment; and

b) the recipient loses AFDC eligibility due to increased hours of employment, wages from employment, or loss of the AFDC earnings disregards.[103]

Limits on eligibility

To receive extended child care eligibility, the recipient must:

a) have received AFDC for at least 3 of the 6 months prior to the loss of eligibility;

b) continue to have a child who is, or if needy, would be, a dependent child;

c) not fail to cooperate in child support enforcement activities;

d) not terminate employment without good cause; and

e) contribute to the cost of care under a sliding scale established by the state.[104]

Studies by HHS

HHS must assess whether people seek to receive AFDC again in order to reestablish eligibility for extended child care. If so, HHS may do regulations, no earlier than October 1, 1991, restricting requalification.[105]

HHS must study the effects of extended child care eligibility on reducing welfare dependence and making the transition to

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103 Sec. 302(a)(3), amending Sec. 402(g)(1)(A)(ii).

104 Sec. 302(c), amending Sec. 402(g)(1)(A).

105 Sec. 302(d).

employment, and report to Congress by January 1, 1997.[106]

STATE OPTIONS

The state must decide:

1) what is an appropriate sliding scale for care;

2) what standard to use for determining when care is necessary for employment.

POSSIBLE HSS REGULATIONS

HHS regulations may provide guidelines or requirements for state sliding scales, and may clarify the terms under which care must be provided;

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106 Sec. 302(e).

P. EXTENDED ELIGIBILITY FOR MEDICAL ASSISTANCE

Effective April 1, 1990, states must provide up to 1 year of continued medical assistance for persons losing AFDC due to employment.[107] Generally, states must provide the first six months of coverage without a fee, either through continued Medicaid eligibility or through the state paying a family's expenses for premiums, deductibles, coinsurance, or other costs for health insurance offered by the employer. After the first 6 months, states must offer an additional 6 months of coverage for families with income below 185% of poverty, but states may impose a premium for families with earnings exceeding 100% of poverty. States have a number of options as to both the scope of services and the method of providing medical coverage in the second six month period.

The many details of state choices and options under the extended medical assistance provisions are not discussed in this text.

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107 Sec. 303.

Q. FEDERAL AND STATE FINANCIAL PARTICIPATION

THE LAW

Basic Structure for Federal Financial Participation

State expenditures for JOBS are entitled to federal match under the following structure:

a) An amount determined by a capped entitlement formula for JOBS program expenditures.

b) The state's Medicaid rate for child care costs, without a cap on federal matching funds.

The capped entitlement formula for non-child care JOBS expenditures provides, subject to a maximum amount per state:

a) 90% federal match for expenditures up to the state's FY 87 WIN allocation;

b) the Medicaid matching rate, or 60%, whichever is higher, for non-administrative costs and costs of full-time staff operating the Program;

c) 50% for administrative costs of the program (other than personnel costs for full-time staff operating the program);

d) 50% for the costs of transportation and other work-related supportive services;

The maximum amount per state is based on a federal capped amount, distributed according to each state's relative number of adult AFDC recipients.[108] The capped amounts are:

Year	Capped Amount
FY 89	$600 million
FY 90	$800 million
FY 91	$1 billion
FY 92	$1 billion
FY 93	$1 billion
FY 94	$1.1 billion
FY 95	$1.3 billion
FY 96 and later years	$1 billion

State Maintenance of Effort Requirement

Federal funds for JOBS may not be used to supplant non-Federal funds for existing services and activities which promote the purpose of Title IV-F. State or local funds expended for

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[108] Sec. 201(c), amending Sec. 403(k).

that purpose must be maintained at least at the level of such expenditures for FY 1986.[109]

STATE OPTIONS

1) A state can, but need not, provide additional state funding above and beyond that for which federal financial participation is available.

2) A state may choose to spend less than the amount of its capped entitlement, so long as the state operates a program meeting the requirements of federal law.

There is no consistent relationship between the JOBS funding level and participation requirements. The following chart relates the funding level to participation requirements.

Year	General Participation Quota	AFDC-U Quota	Funding
FY 90	7%	---	$800 million
FY 91	7%	---	$1 billion
FY 92	11%	---	$1 billion
FY 93	11%	---	$1 billion
FY 94	15%	40%	$1.1 billion
FY 95	20%	50%	$1.3 billion
FY 96	---	60%	$1 billion
FY 97	---	75%	$1 billion

Note that states will have to serve over 50% more participants with the same JOBS funding in FY 92 than in FY 91. States will need to decide whether to commit state resources without federal matching funds, or cut back their programs. Similarly, states will face substantial increases in participation requirements, with minimal increases in funding, in FY 94 and FY 95. Planning for these latter years will be further disrupted by the need to shift resources to comply with the AFDC-U quotas.

POSSIBLE HSS REGULATIONS

HHS regulations may clarify:

1) which expenditures are considered administrative and which will be subject to the capped entitlement match;

2) how to determine which state expenditures in FY 1986 are subject to the maintenance of effort requirement.

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[109] Sec. 201(b), creating Sec. 482(a)(3).

R. INDIANS

THE LAW

Tribe Operation

Within six months after enactment of the Act, i.e., by April 13, 1989, an Indian tribe or Alaskan Native Organization may apply to conduct a JOBS program.[110] The tribe or Alaskan Native organization would receive a portion of funds for that state for operation of its program.

Effectiveness Study

The Secretaries of HHS and Labor must report to Congress by October 13, 1989, of the results of a study of the effectiveness of JOBS programs for Indians.[111]

STATE OPTIONS

This provision creates an option for a tribe or Alaskan Native Organization rather than the state. In view of the very short time frame, advocates working with such groups should examine and evaluate the statutory provision as soon as possible.

POSSIBLE HSS REGULATIONS

HHS regulations may address in greater detail the nature of a JOBS Program to be run by a tribe or Alaskan Native Organization.

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110 Sec. 201(b), creating Sec. 482(i).

111 Sec. 203(d).

S. PERFORMANCE STANDARDS, REPORTING REQUIREMENTS, IMPLEMENTATION AND EFFECTIVENESS STUDIES

THE LAW

Performance Standards

Within three years of the effective date of the Act (October 1, 1990), the Secretary must develop and submit recommendations to Congress for performance standards.[112]

Reporting Requirements

The Secretary must establish uniform reporting requirements under which states must furnish information and data, for each program activity, on:

a) the average monthly number of families assisted;

b) the types of such families;

c) amounts spent per family;

d) the length of their participation;

e) such other matters as the Secretary may determine.[113]

Implementation and Effectiveness Studies

HHS must conduct an implementation study, involving a representative sample of states and localities, examining the types, mix, and costs of services offered; participation rates or activity levels, characteristics of individuals in different types of activities; provisions for child care; institutional arrangements, and such other factors as the Secretary deems appropriate.[114]

HHS must also conduct a study examining the relative effectiveness of different approaches for assisting long-term and potentially long term recipients. This study will involve five demonstration projects using experimental and control groups, and using specific outcome measures to test the effectiveness of particular programs.[115]

Within three months of enactment of the Act, the Secretary

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[112] Sec. 203(b), creating Sec. 487(a).

[113] Sec. 203(b), creating Sec. 487(b).

[114] Sec. 203(c)(1).

[115] Sec. 203(c)(2).

must convene an advisory panel, to design, implement, and monitor a series of implementation and evaluation studies.[116]

STATE OPTIONS

The state must decide:

1) what program data to develop and retain beyond the minimal requirements of the Act;

2) whether it wishes to be one of the five states participating in the effectiveness studies.

POSSIBLE HSS REGULATIONS

HHS must specify what, if any, additional matters states must report about beyond those specified in the Act, though these requirements may not appear in regulations.

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116 Sec. 203(c)(4).

T. NEW PROVISIONS FOR THE AFDC-U PROGRAM

THE LAW

AFDC-Unemployed Parent (AFDC-U) benefits are provided to two-parent families where a wage-earner meets federal requirements for being "unemployed" and for establishing a prior connection to the workforce.

Expansion of AFDC-U Program

Effective October 1, 1990, all states must operate an AFDC-U program.[117] A state which did not have an AFDC-U Program on September 26, 1988, may limit the number of months of AFDC-U eligibility, but may not deny AFDC-U based on time limits unless a family has received AFDC-U in 6 of the preceding 12 months.[118]

A state may not deny benefits based on a time limit unless it provides in its state plan assurances that it has a program (pursuant to HHS regulations) for providing education, training, and employment services to assist such parents in preparing for and obtaining employment.[119]

If a state imposes time limits on benefits, it still must provide Medicaid coverage to family members who would be receiving benefits but for the time limits.[120]

Activities up to 40 hours per week

States may, except as otherwise provided by other provisions of the JOBS program, require AFDC-U parents to participate in JOBS up to 40 hours per week.[121]

Payment After Performance

States may provide for payment of AFDC benefits for AFDC-U families up to one month after the performance of assigned program activities.[122]

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117 Sec. 401(a),(g).

118 Sec. 401(b)(1)(C), amending Sec. 407(b)(2)(B).

119 Sec. 401(b)(1)(C), amending Sec. 407(b)(2)(B)(ii)(I).

120 Sec. 401(d).

121 Sec. 401(b)(1)(C), amending Sec. 407(b)(2)(C).

122 Sec. 401(b)(1)(C), amending Sec. 407(b)(2)(C).

Option to Liberalize Quarters of Work Requirement

For a family to receive AFDC-U, the principal earner must demonstrate a connection to the work force, by either: a) having 6 or more quarters of work in any 13 calendar quarter period ending within a year before AFDC-U application; or b) having received or been eligible to receive unemployment compensation within a year before application for aid.

The Act defines participation in JOBS in a quarter as meeting the work requirement for the quarter.[123]

The Act creates a state option to let families satisfy four of the six quarters by attendance in elementary or secondary school, vocational or technical training, or participation in JTPA. The state may limit this liberalization to one or more subdivisions of the state.[124]

Demonstration Projects to Liberalize Definition of Unemployment

Under current law, a family is ineligible for AFDC-U benefits when a parent is employed for 100 or more hours in the month. The Act authorizes HHS to allow up to 8 demonstration projects that would allow employment for a number of hours greater than 100 without affecting AFDC-U eligibility. HHS must approve at least one state demonstration project providing for a total elimination of the 100 hour rule.[125] The demonstration projects may be statewide, or limited to political subdivisions.

Demonstration projects could be up to 5 years in length, and may begin after September 30, 1990.[126]

STATE OPTIONS

If the state does not have a current AFDC-U Program, it must decide:

1) whether to enact a program earlier than the mandated date of October 1, 1990;

2) whether to impose a time limit on benefits, and if so, what time limit.

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123 Sec. 401(c)(4)(B), amending Sec. 407(d)(1).

124 Sec. 401(c)(1),(2) amending Sec. 407(d)(1).

125 Sec. 503, amending Sec. 1115(d)(1).

126 Sec. 503, amending Sec. 1115(d)(4).

Each state must decide:

1) the numbers of hours of obligations to impose on AFDC-U parents;

2) whether to require activity before payment for AFDC-U parents;

3) whether to adopt, in whole or in part, the option to liberalize requirements for connection with the work force;

4) whether to seek one of the demonstration projects for liberalizing the 100-hour rule for AFDC-U eligibility.

POSSIBLE HSS REGULATIONS

HHS regulations must address what a state must demonstrate as to its provision of education, training, and employment services for affected families if the state imposes a time limit on AFDC-U eligibility.

HHS regulations must address what vocational or technical training courses will be satisfactory under the state option for liberalizing the quarters of work requirements.

U. OTHER AFDC AMENDMENTS

THE LAW

Changes in Earned Income Disregards

Effective October 1, 1989

a) the standard earned income disregard goes up from $75 to $90;

b) the child care disregard goes up from $160 per child to $175 per child 2 and older, $200 per child under 2;

c) the child care disregard is to be applied as the last step in AFDC budgeting; and

d) the earned income tax credit is completely disregarded for AFDC purposes.[127]

Option to Require Minor Parents to Live at Home

Effective January 1, 1990, states may choose to require a parent or pregnant woman under 18 who has never married to live in a specified setting to get AFDC. If the state takes this option, the AFDC, where possible, will be paid to the adult relative instead of the minor parent.

The minor parent would have to live in:

a) the home of her parent, guardian, or adult relative; or

b) a foster home, maternity home or other adult-supervised supportive living arrangement.

The requirement would apply unless:

a) there was no living parent or guardian whose whereabouts were known;

b) the parent or guardian would not let the minor parent live in the home;

c) the emotional or physical health or safety of the minor parent or her child would be jeopardized by living in the home;

d) the minor parent had lived apart from her parent or guardian for at least a year before having a child or applying for AFDC;

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[127] Sec. 402(a), amending Sec. 402(a)(8)(a).

e) the state found good cause, in accordance with HHS regulations.[128]

Periodic Reevaluation of Need and Payment Standards

Each state must reevaluate its standard of need and payment level at least once every three years, under a schedule set by HHS. The report must include a statement of how the need standard is determined, the relationship between the need standard and payment standard, and any changes in the need standard or payment standard during the three years.

States must report their results to HHS and the public in such form and manner as HHS specifies. HHS will transmit the results to Congress.[129]

Preeligibility Fraud Detection

By October 1, 1989, states are required to provide for appropriate measures to detect fraudulent applications for AFDC before eligibility is established. HHS must promulgate final implementing regulations by April 13, 1989.[130]

STATE OPTIONS

1) The state must decide whether to require minor parents to live at home. If the state adopts this option, it must decide what constitutes an acceptable adult supervised supportive living environment, and what constitutes good cause for waiver of the requirement.

2) The state must, under HHS regulations to be promulgated, decide what kind of preeligibility fraud detection procedures to develop.

POSSIBLE HSS REGULATIONS

HHS regulations must address:

1) the definition of good cause for purposes of the option to require a minor parent to live at home;

2) the schedule for reports on state standards of need and payment levels, and the contents of the reports;

3) requirements for state preeligibility fraud detection procedures.

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128 Sec. 403, creating Sec. 402(a)(43).

129 Sec. 404, amending Sec. 402(h).

130 Sec. 605.

V. DEMONSTRATION PROJECTS

THE LAW

The Act authorizes numerous possible state demonstration projects. Some of the projects will require federal funds to be very useful. Where the words "appropriation authorized" appear, this means the Act authorizes the appropriation of funds for the project; Congress may or may not actually appropriate the funds.

1) Demonstration Projects to test the effect of early childhood development programs. Up to 10 states, to utilize such development programs to enhance the cognitive skills and linguistic abilities of children under 5, to improve the communication skills of such children, and to develop their ability to read, write, and speak English effectively. Appropriation authorized.[131]

2) Demonstration Projects to Encourage Innovative Education and Training Programs for Children. Any state may conduct a project to test financial incentives and interdisciplinary approaches to reducing school dropouts, encouraging skill development and avoiding welfare dependence. Appropriation authorized.[132]

3) Demonstrations to Ensure Long-Term Family Self-Sufficiency through Community Based Services. Any state, to test more effective methods of providing coordination and services to ensure long term family self sufficiency through community based comprehensive family support services. Appropriation authorized.[133]

4) Demonstration to encourage states to employ AFDC Parents as Paid Child Care Providers. Up to 5 states, to encourage employment of AFDC parents as providers of child care for other AFDC recipients. Appropriation Authorized.[134]

5) Demonstration Projects to Test Alternative Definitions of Unemployment, for purposes of AFDC-U eligibility. Up to 8 states. (See Part T). No appropriation needed.[135]

6) Demonstration Projects to Address Child Care Access Problems. Any state, to develop, improve, or expand activities

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131 Sec. 501(a).

132 Sec. 501(b).

133 Sec. 501(c).

134 Sec. 502.

135 Sec. 503.

designed to increase compliance with child access provisions of court orders. Appropriation authorized.[136]

7) Demonstration Projects to Expand the Number of Job Opportunities available to certain low income individuals. Between 5 and 10 nonprofit organizations, including community development corporations, for projects providing technical and financial assistance to private employers to assist them in creating employment and business opportunities for low income persons. Appropriation Authorized.[137]

8) Demonstration Projects to Provide Counseling and Services to High Risk Teenagers. 4 states, for projects to provide a Teen Care plan, including a clearinghouse, counseling services, transportation, child care, and other services, for teenagers with a history of academic or behavior programs, or who come from one parent families, or are parents or pregnant. Appropriation Authorized.[138]

STATE OPTIONS

The state must decide whether to seek to participate in one or more demonstration projects. For each demonstration project, the state would then have to decide on the specific content of the project.

POSSIBLE HSS REGULATIONS

HHS may provide greater specificity as to the permissible content of any or all of the possible demonstration projects.

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136 Sec. 504.

137 Sec. 505.

138 Sec. 506.